

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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In re:

THE FINANCIAL OVERSIGHT  
AND MANAGEMENT BOARD  
FOR PUERTO RICO

as representative of

THE COMMONWEALTH OF  
PUERTO RICO, et al.

Debtor.

PROMESA  
Title III

Case No. 17-bk-03283(LTS)

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In re:

THE FINANCIAL OVERSIGHT  
AND MANAGEMENT BOARD  
FOR PUERTO RICO

as representative of

THE EMPLOYEES RETIREMENT  
SYSTEM OF THE  
COMMONWEALTH OF  
PUERTO RICO,

Debtor.

PROMESA  
Title III

Case No. 17-bk-03566(LTS)

Re: ECF No. 367

\* \* \* \* \*

BEFORE THE HONORABLE JUDITH G. DEIN  
MAGISTRATE JUDGE  
(Conference)

TRANSCRIPT FROM AUDIO

**APPEARANCES:**

(by telephone)  
Geoffrey S. Stewart, Esq.,  
Matthew E. Papez, Esq.,  
Sparkle L. Sooknanan, Esq.,  
David Fox, Esq.,  
Jones Day,  
on behalf of the Movants;

(by telephone)  
Cheryl Tedeschi Sloane, Esq.,  
White & Case LLP,  
on behalf of the Bondholders;

(by telephone)  
William J. Sushon, Esq.,  
Madhu Pocha, Esq.,  
O'Melveny & Myers LLP,  
on behalf of AAFAF and ERS;

(by telephone)  
William D. Dalsen, Esq.,  
Proskauer Rose LLC,  
on behalf of the Respondents;

(by telephone)  
Nicholas Bassett, Esq.,  
Paul Hastings LLP,  
on behalf of the Official Committee of Unsecured  
Creditors;

(by telephone)  
Landon Raiford, Esq.,  
Jenner & Block LLP,  
on behalf of the Retirement Committee.

1 12 APRIL 2019 -- 4:45 P.M.

2 THE CLERK: Counsel, this is Courtroom 15, the  
3 Clerk -- Courtroom Clerk for Judge Dein.

4 Could counsel please identify themselves for the  
5 record, please.

6 MR. STEWART: Sure. For Movants and Jones Day,  
7 it's Geoffrey Stewart, Matt Papez, Sparkle Sooknanan,  
8 and David Fox is on in Boston.

9 MR. SUSHON: And this is Bill Sushon from  
10 O'Melveny & Myers. With me on the line is my  
11 colleague, Madhu Pocha, for AAFAF in its own right as  
12 well as AAFAF, as representative for the Commonwealth  
13 and ERS.

14 MR. DALSEN: Good afternoon. This is  
15 William Dalsen from Proskauer Rose, here on behalf of  
16 the Oversight Board.

17 MR. BASSETT: And Nicholas Bassett from  
18 Paul Hastings on behalf of the Official Committee of  
19 Unsecured Creditors on the line as well.

20 MS. SLOANE: Good afternoon. Cheryl Sloane from  
21 White & Case on behalf of the Bondholders.

22 MR. RAIFORD: Landon Raiford, Jenner & Block, on  
23 behalf of the Retiree Committee.

24 THE COURT: All right. I believe that's  
25 everyone. I'm going to ask Stephanie to officially

1 call the case.

2 THE CLERK: The United States District Court for  
3 the District of Massachusetts is now in session, the  
4 Honorable Judge Dein presiding. Today is Friday,  
5 April 12th, 2019. The matter, In Re: The Financial  
6 Oversight and Management Board for Puerto Rico, as  
7 representative of the Employees' Retirement System of  
8 the Government of the Commonwealth of Puerto Rico,  
9 Bankruptcy Case No. 17-3566 will now be heard.

10 THE COURT: Okay. We'll incorporate the roll  
11 call that we just went through. This is Judge Dein  
12 speaking, and thank you all for working late on a  
13 Friday. And we're here on the motion for immediate  
14 status conference.

15 Basically, I don't know if we'll deal with it  
16 substantively or if it makes the most sense to just set  
17 up a schedule from this, but have you guys had a chance  
18 to talk since the papers were filed?

19 MR. STEWART: No, we have not, Your Honor.

20 THE COURT: Okay. So let me ask -- I see the  
21 objections, and the objections that have been filed  
22 obviously very promptly do say, you know, there's room  
23 for discussion here. My sense is that it probably  
24 makes some sense to have some conversation about this  
25 today but to basically give you a chance to confer over

1 the next few days.

2 My immediate reaction, for what it's worth, and  
3 you can make this a subject of conversation, but if  
4 there was a fuller understanding of how items got  
5 grouped, it would fundamentally answer a lot of the  
6 questions because there's clearly an overlap in the  
7 dates in the different entries, and it's unclear why  
8 the documents were put together the way they were, and  
9 I think that may answer a lot of the questions that  
10 exist. Again --

11 MR. STEWART: Your Honor, I --

12 THE COURT: Yeah, go ahead.

13 MR. STEWART: This is Geof Stewart. And I agree  
14 very much with that because I think that there's kind  
15 of overgrouping here. The log I think has -- what? --  
16 seven overall groups. Each one -- I've looked at a  
17 few, I don't have them all tabulated. Most of them,  
18 the ones I've looked at, have dozens and dozens of  
19 recipients and senders, usually over a hundred  
20 documents, three or four areas in descriptions, I mean,  
21 and anywhere from two to four different privileges.

22 And what the net result of it is, because so  
23 much is grouped together, it's very hard to identify  
24 any particular document as to which a claim of  
25 privilege would be challenged or tested. For example,

1       there are no dates given for any document. The date  
2       ranges are about seven months for each of these  
3       baskets. There's no Bates numbers, so there's no way  
4       even of identifying particular documents.

5               We don't know if every privilege applies to  
6       every document or not. We don't know, on cases where  
7       it's attorney-client privilege, who's copied who may  
8       not be an attorney. Some of the people listed as  
9       recipients or senders not only are not lawyers but  
10      don't work for a law firm.

11             So if it could somehow be broken down to more  
12      categories than seven and there would be some kind of  
13      more granular description, I think it would be more  
14      helpful. The difficulty we have now looking at this is  
15      there is simply no way, with this log, to make use of  
16      it in a motion to compel on privilege.

17             I can't, with what I have, say on Category 1,  
18      Here are some documents I'd like to have looked at. I  
19      don't even know how I would describe a document to the  
20      Court. There is simply no way for me even to do that.  
21      So it has to be either a thumbs up/thumbs down on a  
22      whole category, but that doesn't work because I don't  
23      have enough information to even approach it, which is  
24      why, given what we have here, which is 509 documents,  
25      we thought that we actually, with two caveats, which

1 I'll get into, go to a document-by-document log because  
2 I don't think the number is now so great as to make  
3 that an unreasonable burden.

4 The two caveats, though, are these: I think  
5 where the train went off the tracks had to do with the  
6 definition of "category" in a categorical log. As I've  
7 always understood it, a category would be where you  
8 had, say, two people corresponding back and forth with  
9 one another for a week or two or a month about a  
10 particular topic, and the category would be emails  
11 between Alice and Bob between March 1 and April 15 on  
12 the subject of whatever it is. And those need not be  
13 broken out because we know exactly who wrote them, we  
14 know when it was, we know the subject, so there's no  
15 need for additional work to do that. And I would have  
16 certainly no objection to that kind of categorization.  
17 I think it makes sense.

18 Similarly, and here's the second caveat, where  
19 there's claims of attorney-client privilege, a document  
20 written by a lawyer in one of the law firms I will be  
21 the first to agree has a presumption of privilege to  
22 them. And maybe there's a way of doing this so those  
23 could be done in a categorical way to limit burden. On  
24 the other hand, when you get back to the deliberative  
25 privilege and the executive privilege, those are quite

1 different because those also require, for each  
2 document, identification of what is the decision in  
3 question and who was the decider as well, even more,  
4 what the date is because it has to be predecisional and  
5 how much before the decision or even after the decision  
6 would be relevant.

7 So just -- I'm sorry to be so long-winded, but I  
8 think it is the overbreadth of the categories and the  
9 lack of specificity within them that is our problem  
10 here, and I don't know, other than imposing on the  
11 Court for an in-camera review or something like that,  
12 how we get through it but the generality of what we're  
13 now having to wrestle with.

14 THE COURT: So let me ask whoever is  
15 knowledgeable about how the categories were actually  
16 decided to address that.

17 MR. SUSHON: Your Honor, this is Bill Sushon  
18 from O'Melveny & Myers. Good afternoon.

19 The categories are decided in the way that they  
20 are described, so they are broken down into documents  
21 that concern ongoing litigation with ERS bondholders,  
22 documents -- and that's not a deliberative process  
23 group; that's simply an attorney-client privilege and  
24 work product group.

25 There's documents that concern pension-reform



1 proposals, including converting to pay-go, the pay-go  
2 fee structure, et cetera, that are strictly  
3 attorney-client privilege, attorney work product and  
4 common-interest documents, that's the second category.

5 Then the third category is where we get into  
6 things that are out -- that are concerning the  
7 implementation-treatment calculation, invoicing and  
8 collection of pay-go fees, which is a different  
9 category yet.

10 So if you look at the categories, that's  
11 describing how they were grouped.

12 Now, the Movants here I think fundamentally have  
13 buyer's remorse, their having agreed to a categorical  
14 privilege log. They, at the outset, wanted us to do a  
15 document-by-document log and then, in the course of the  
16 motion to compel briefing, agreed that we could do a  
17 categorical log. Now they're not happy with the  
18 categorical log, and rather than meeting and conferring  
19 with us properly so that we could flesh out some of  
20 their concerns, that yesterday they emailed us and  
21 demanded a meet-and-confer in a two-hour window late in  
22 the afternoon.

23 We asked them -- we agreed to do the  
24 meet-and-confer. They said they wanted to do it about  
25 the privilege log, but when they were asked to give

1 some inkling of what the issues were, they wouldn't  
2 until we got on the call. Then, during the course of  
3 the call, they identified a few genetic concerns, that  
4 we didn't have the document type listed in the  
5 privilege log, that things just weren't detailed  
6 enough, but they couldn't really give any specifics and  
7 then demanded that we turn around a new privilege log  
8 within an hour or they would go to Your Honor.

9 So we did our best last night to address the  
10 concerns that they expressed that we could address. We  
11 gave them the appendix with the identifying information  
12 for the individuals listed on the log; we gave them  
13 information concerning the document type; we gave them,  
14 you know, information concerning which documents had,  
15 prior to the log, been designated as confidential and  
16 privileged. So we did that, and we said, We'll meet  
17 and confer with you further. They didn't take us up on  
18 that; they just ran straight to Your Honor.

19 So, you know, this is not yet something that is  
20 ripe for consideration. We can talk about ways that  
21 they think it would be useful for us to try to break  
22 down these categories further. We're open to that,  
23 Your Honor. We're happy to have that discussion with  
24 them. They just simply haven't been willing to have it  
25 with us as yet. Instead, they ran into Court before we

1 could even finish our discussion.

2 MR. STEWART: Well, actually, I don't know,  
3 Bill, if you were on that call, but I was. I don't  
4 agree with how you characterize it, and I don't think  
5 buyer's remorse is a fair way to put it. And I'm not  
6 interested in pointing fingers or getting personal  
7 about any of this.

8 I think, though, the bottom line is a simple  
9 one. This privilege log is useless. No one on this  
10 call can imagine how on earth you would mount a motion  
11 to compel based on this log. And at our last hearing,  
12 we raised -- we thought we had great specificity in  
13 what was supposed to be in the log. We understood from  
14 counsel that they knew what was supposed to be there,  
15 and we would get something that let us go forward.

16 In terms of running into Court, Monday is when  
17 this motion is due. That is when Judge Swain directed  
18 the motion to be filed, and we felt it was appropriate  
19 to take Judge Dein up on her offer or her suggestion we  
20 come to her, which is why we did it, because I don't  
21 know what we were supposed to do with a Monday deadline  
22 on this motion with a log that cannot be used.

23 THE COURT: So let me -- I think that's always a  
24 problem when we have these shortened deadlines, and it  
25 always adds a lot of pressure to everyone, and I do

1 think there's room to meet and confer.

2 But let me ask you this as a practical matter:  
3 The attorney-client claims here, it seems to me, if  
4 you're going to object to them, we have a description  
5 of the documents, your real objection is whether you  
6 can actually have a claim of attorney-client with these  
7 many different clients; right? I mean, that's  
8 fundamentally your objection to that. You're not  
9 objecting to one document versus another.

10 It seems to me that there are not that many  
11 documents for which either the deliberative process or  
12 the executive privilege is claimed, and perhaps just to  
13 simplify this and not send you out over the weekend to  
14 talk in circles, it may be easier if I just say to you,  
15 for those claims of privilege, you need to do it  
16 document by document, it does not look to me like  
17 that's a lot of documents, and that the attorney-client  
18 can stay the way it is subject to further discussions  
19 if you have it.

20 But I don't know how much more information you  
21 get out of a more detailed attorney-client claim here.  
22 If you recognize -- if you're not objecting that the  
23 subject matter of the claim could be an attorney-client  
24 issue, then you are -- they have identified that there  
25 are attorneys involved in the communications. I'm not

1       sure how much more information on those claims of  
2       privilege you need to bring your challenge. I don't  
3       want to preclude discussion on that among yourselves if  
4       you feel that that makes sense, but to the deliberative  
5       process and executive privilege, I believe you really  
6       have only a few documents there that have claimed those  
7       privileges.

8               So does that make sense, to just itemize those  
9       separately?

10              MR. STEWART: It makes sense to us. On the  
11       attorney-client side, the main issue that we had there  
12       is that the -- we've been -- we understand that it's  
13       attorneys from one Government agency purporting to  
14       serve as attorneys for another Government agency,  
15       including sometimes situations where the very two  
16       agencies have directly opposing interests and that, in  
17       that circumstance, there can't be a privilege for  
18       obvious reasons.

19              THE COURT: All right. But that's --

20              MR. STEWART: However --

21              THE COURT: You have enough information in this  
22       log to bring that claim.

23              MR. STEWART: Okay. Well, let's -- sure. I  
24       mean, I'd have to dig further, but we can certainly try  
25       to do it based on the record in this log.

1 THE COURT: Well, the record here, as I'm  
2 reading it, identifies the categories of clients who  
3 are participating in the communications. So I think  
4 you can -- it's fair to say that you're assuming that  
5 the documents grouped in these categories went to more  
6 than one of the clients that are listed. And you can  
7 raise your claim, and I'm assuming the response will  
8 not be, Oh, it didn't go to anybody else, but we think  
9 it was a common interest, or whatever the defense will  
10 be. But I think that issue can be teed up with the log  
11 as it is now.

12 MR. STEWART: Okay.

13 THE COURT: Mr. Sushon?

14 MR. SUSHON: Your Honor, with respect to  
15 document-by-document logging for executive privilege  
16 and deliberative process, I believe that that is  
17 something that we should be able to do. As you point  
18 out, it is only I think approximately 130 or so  
19 documents. So we'll endeavor to get that done.

20 MR. STEWART: Okay.

21 THE COURT: So I think that that covers  
22 really -- that enables everybody to bring their claims  
23 by Monday. I would like the bulk of the motions to  
24 compel on Monday. I don't know how long it's going to  
25 take you to update your log. If you need to supplement

1 and file on Tuesday or whatever to deal with an updated  
2 privilege log, that's fine. But I think that those two  
3 changes -- I think that one change, actually, the  
4 itemization of the documents for which you claimed  
5 deliberative process over executive privilege should be  
6 sufficient to bring the motions to compel.

7 MR. STEWART: Okay. We also, Your Honor, wanted  
8 to raise the issue about how we still don't have any  
9 documents from the Board, and we're told we're not  
10 going to get any until Sunday, and we're told that  
11 we're not even sure when that privilege log is coming  
12 in.

13 There seems to have been a belief that the  
14 directions to the Board were not sufficiently concrete.  
15 I'm not interested in revisiting any of that, but I  
16 would like an order from the Court directed at the  
17 Board, under Rule 37, saying, You must produce your  
18 documents, and you must produce your log, and you  
19 should start doing the documents now, and you have a  
20 deadline to complete this of whatever the date's going  
21 to be because, when it comes to the Board, we can't do  
22 anything because we literally have not gotten a single  
23 sheet of paper, and we don't even have a promised  
24 delivery date on a log.

25 MR. DALSEN: Your Honor, Good afternoon.

1 THE COURT: Mr. Dalsen, is that -- who's here?

2 MR. DALSEN: Yes. Good afternoon, Your Honor.

3 This is William Dalsen from Proskauer on behalf of the  
4 Oversight Board.

5 Your Honor, so when it comes to the documents  
6 from the Oversight Board, I want to state the  
7 conclusion first, but then I want to go in to some of  
8 the detail. So the first is the -- you know, we do not  
9 believe, and of course I understand we're speaking to  
10 the Court right now, but we did not believe and we do  
11 not believe that we were ordered to produce documents  
12 by April 10th or to complete a document production by  
13 April 10th. That's the first point.

14 But the second point, which is very important as  
15 a practical matter, is that the Oversight Board has  
16 been taking its obligation to respond to the subpoena  
17 very seriously, and I want to describe the progress  
18 that we've made in doing so.

19 As the Court ordered, we met and conferred with  
20 the Movants beginning after the hearing. We reached an  
21 agreement as to search parameters last Thursday. Part  
22 of that negotiation involved an increase in the number  
23 of custodians from four to eight custodians. We  
24 originally proposed four. The Movants requested eight.  
25 After preparing our searches and looking at the number,



1 which that total number of non-duplicative, direct-hit  
2 documents ended up being 7,466 documents, we agreed to  
3 those search parameters that would require us to review  
4 those direct-hit documents. At no point during that  
5 discussion and at no point during our discussion  
6 leading up to the filing of the joint status report on  
7 April 5th did the parties discuss a completion date for  
8 discovery from the Oversight Board.

9 From that Thursday evening, April 4th, until  
10 this past Tuesday, which is -- what was that now? -- I  
11 believe the 9th, in that basically four-and-a-half-day  
12 period, the Oversight Board completed its first-level  
13 review of those 7,466 documents. We are continuing our  
14 review now, which involves quality control, obviously,  
15 and also a second-level review, including a substantive  
16 evaluation of which privileges may or may not apply and  
17 also preparing a log in accordance with the Court's  
18 guidance at the hearing and of course on this call.

19 We are moving along. We are not introducing any  
20 delay whatsoever into this process. The fact that we  
21 have -- that we worked over the weekend to review that  
22 number of documents at a first-level review very  
23 quickly I would submit shows that we are taking this  
24 very seriously, and we are moving as expeditiously as  
25 possible. We anticipate, just to give you a "where are

1 we now," we anticipate that we will be at least halfway  
2 through our second-level review by this coming Tuesday.  
3 We still anticipate making a production on Sunday, the  
4 14th. As we have said, the Movants -- I believe last  
5 week we began to say that to them, and we also  
6 confirmed that to them on April 8th, this past Monday,  
7 so we are still going to be making a first production  
8 on the 14th.

9 We are moving along as quickly as we possibly  
10 can to evaluate this level of documents on a very  
11 expedited time schedule, and I believe that next week,  
12 after we are better into our second-level review, we  
13 will have a much better idea of when we can commit to a  
14 date certain to complete our document production and  
15 also to produce a privilege log.

16 MR. STEWART: Your Honor, I think you can see  
17 why we wanted to speak with you. We were very  
18 surprised to learn that the Board did not think it was  
19 subject to the April 10 production date and in fact was  
20 of the view that somehow the instructions that had been  
21 given to the Board were not -- didn't have the binding  
22 effect we thought they did. What we're now hearing,  
23 though, is we're not going to get very much of anything  
24 any sooner than Tuesday, and that's just a second-level  
25 review being done on Tuesday --

1 THE COURT: Well, no. I heard that there's  
2 going to be a production on Sunday, the 14th.

3 MR. STEWART: Yeah. Well, I don't think it's  
4 going to be a very big one. And when do we get the log  
5 from the Board?

6 THE COURT: So my memory, without reviewing the  
7 log, was that there was a recognition that the  
8 Oversight Board had not yet conducted its -- any  
9 search -- well, it had done some search for documents,  
10 but it was not formal in response to the requests and  
11 that the meet-and-confer was supposed to deal with the  
12 number of custodians and the search terms and the like,  
13 which is what happened.

14 So I don't recall the April 10th -- I remember  
15 April 10th being aspirational. I'm not sure that it  
16 was set in stone for the Oversight Board because the  
17 search had not gone on as long as it had with the  
18 others. That's my memory, but I'll be honest with you,  
19 I haven't gone back and listened to the transcript, and  
20 I would prefer not to. I hate listening to myself  
21 almost as much as I hate reading my transcripts.  
22 They're on my least favorite list of things to do.

23 What if we do that the production needs to be a  
24 rolling production? So there'll be a production on the  
25 14th, hopefully another one on the 16th. You know, you

1       need to roll it. Can you aim for at least a  
2       substantive privilege log -- I don't know what holidays  
3       people, I don't want to interfere with anybody's  
4       holiday -- the 19th? Is that a problem to give at  
5       least the beginnings of a privilege log, recognizing  
6       that it may not be complete at that time?

7               MR. DALSEN: Your Honor, this is William Dalsen  
8       again.

9               I believe that is something we can do, at least  
10       we can produce. I can't promise a complete log, but I  
11       think we can give something. I do know that at least  
12       some people that are staffed on this matter are  
13       observing Passover and also observing -- and others are  
14       observing Easter, but I think we can get something to  
15       the Movants, and from there at least we'll have  
16       something to look at, and hopefully we can address any  
17       threshold concerns they have with the log itself once  
18       they receive that.

19              MR. STEWART: Yeah. And by the way, Judge, on  
20       the log from the Board, I assume we'll have the same  
21       rule with respect to document by document as to  
22       predecisional and executive privilege claims, that that  
23       was going to be the rule.

24              THE COURT: I think that will be the rule,  
25       unless you appear that there's thousands that fit into

1       that category so that you want dispensation from it.  
2       But, otherwise, that's the assumption --

3               MR. STEWART:   Okay.

4               THE COURT:   -- that for those categories,  
5       they'll be item by item.

6               For the attorney-client and attorney work  
7       product claims, again, you're going to need the list of  
8       characters, their roles. I mean, all of that makes it  
9       easier to read and meaningful. So I think, to the  
10      extent that there's been the meet-and-confer and  
11      tweaking of what needs to be included in the log up  
12      until now, that the Board will take those directives  
13      and apply it to the log that the Board's going to  
14      produce; okay?

15              What I see, then, is we'll see where we are at  
16      the Omni on the Oversight Board production. If it's  
17      not ripe for review or if we can't really get into the  
18      nitty-gritty, we can certainly have hearings in Boston  
19      promptly thereafter.

20              MR. STEWART:   Okay. All right.

21              Your Honor, two other housekeeping matters. One  
22      is, since our motion will be due on Monday, we need to  
23      have some certitude coming from the ERS side on when  
24      we'll get the log because we have to read it, and of  
25      course we have to prepare motion papers with respect to

1       it and the motions to compel due and that being fairly  
2       factually driven, is there agreement on when we can  
3       expect to see the new revised log?

4               MR. SUSHON: Your Honor, this is Bill Sushon  
5       from O'Melveny.

6               Your Honor had suggested that the Movants could,  
7       if necessary, supplement their motion to compel. It  
8       doesn't have to be done Monday. We don't want to hold  
9       up their motion to compel. I just -- I don't know  
10      exactly what's involved in getting those 120 documents  
11      or so broken out, so I'm loath to agree to a specific  
12      deadline, but you know, we will endeavor to get it to  
13      them by Sunday afternoon, and if for some reason that's  
14      presenting a problem, we will let them know.

15              MR. STEWART: Well, you know, this Sunday is  
16      also a holiday, Judge, but why don't -- perhaps I would  
17      just suggest we be given one more day to file our  
18      motion to compel so that we don't end up on the short  
19      end of things, you know, given all the circumstances,  
20      that we can keep the rest of the dates as they are.

21              THE COURT: I don't have a problem with that. I  
22      just wonder if it makes sense to divide it into two, if  
23      it makes sense to do the attorney-client because you  
24      already have that, to do that by the 15th and then to  
25      do the other deliberative process one, I'll call it,

1 kick that 24 hours.

2 MR. STEWART: Okay. Your Honor, if that's how  
3 you want it done, that's what we will do.

4 THE COURT: You know, if you tell me it's not  
5 workable, it's not going to be the end of the world one  
6 way or the other; it just may be easier that way --

7 MR. STEWART: Yeah.

8 THE COURT: -- so we can get started.

9 MR. STEWART: I think we could do it either way.  
10 Actually, their biggest issue I see is just the  
11 confusion of having more than one -- you know, a motion  
12 to compel with two different sets of papers, but that's  
13 really more of a burden on the Court than anybody else.

14 THE COURT: I appreciate it, but given the  
15 number of filings in this case, it's the least of the  
16 issues.

17 MR. STEWART: But while we're on that subject,  
18 we also think that we ought to have the same page  
19 limits that the parties had last time, especially now  
20 that our brief would be bifurcated. I think that the  
21 basic rule is 15 pages. Last time I think we had 35,  
22 and I think we'll need that much this time too, with  
23 the understanding that would be 35 spread over those  
24 two sets of motions, the Monday motion and the Tuesday  
25 motion, not 35 for each motion.

1 THE COURT: I don't have a problem with that.  
2 Does anybody?

3 MR. SUSHON: Your Honor, this is Bill Sushon --  
4 I'm sorry. Go ahead, Will. You go ahead.

5 MR. DALSEN: Apologies, Bill.

6 So, Your Honor, this is William Dalsen again  
7 from Proskauer.

8 I, in principal, don't have an issue with that,  
9 although I just want to make sure that I understand the  
10 request that's being made as to whether this is --  
11 whether Mr. Stewart is seeking an extension -- or  
12 excuse me -- an enlargement of the number of pages just  
13 as it pertains to privilege motions or if he also  
14 intends to file other motions to compel where he's also  
15 asking for enlarged pages -- enlargement of page  
16 numbers as to them as well.

17 MR. STEWART: I'm talking about the papers we're  
18 filing on Monday and Tuesday, and I -- actually, I  
19 don't think we'll be moving to compel against the Board  
20 since we will not by then have enough to move at all.  
21 So this would really be, I think, the two motions, the  
22 Monday motion and the Tuesday motion, directed to the  
23 productions by ERS, AAFAF and the Commonwealth.

24 MR. DALSEN: I see. In that case -- again, this  
25 is William Dalsen for the Oversight Board.



1           In that instance, I don't have an issue with  
2           that, Your Honor.

3           THE COURT: Okay. So, as I understand it,  
4           there's basically going to be two motions to compel,  
5           one on the attorney-client-privilege-related issue and  
6           attorney work product and the second being on  
7           deliberative process and executive privilege. The  
8           total number of pages for the moving parties there  
9           would be 35 divided however you want.

10          MR. STEWART: Okay.

11          MR. SUSHON: Your Honor.

12          THE COURT: Yeah.

13          MR. SUSHON: I'm sorry. This is Bill Sushon  
14          from O'Melveny.

15                I just -- I would like to ask the Court, first,  
16                if we could then have until -- since they are going to  
17                have until Tuesday for the deliberative process motion,  
18                if our opposition to that could be due Friday. It  
19                would otherwise be due Thursday.

20                And then, secondly, I'm not sure if I'll need it  
21                or not, but rather than have to burden the Court with  
22                another motion, if we could have a like number of pages  
23                for our opposition.

24          MR. STEWART: Certainly no problem with the like  
25          number of pages, Your Honor, but I am troubled -- the

1 problem with pushing the opposition response is that it  
2 basically gives us from close of business on Good  
3 Friday to over the Easter weekend to prepare our reply.  
4 I think -- and I'm sorry if I sound self-righteous  
5 here, but the reason we were being put to having to do  
6 this on Tuesday is that the privilege log we have to  
7 deal with, in our view, we should never have been in  
8 this state to begin with, so we don't really think it's  
9 fair to us that that comes out of our time and our  
10 schedules, and we're not the party that produced the  
11 log that way. But if you want to do it --

12 THE COURT: Okay. Let's be practical, though.  
13 So on Wednesday, there's going to be a response to the  
14 Monday filing, so can we do close of business Thursday  
15 to the Tuesday filing? How's that?

16 MR. SUSHON: Your Honor, we have until Thursday  
17 at 3:00 p.m. to oppose the current --

18 THE COURT: Oh, for both of them?

19 MR. SUSHON: Right. That was --

20 THE COURT: Okay.

21 MR. SUSHON: Well, there was only going to be  
22 one. You know, now I guess it would be both. You  
23 know, if we could even have until Friday morning, I  
24 think it would be helpful for us. And that would just  
25 be for the deliberative-process motion.

1 THE COURT: So I'm sorry. So you would still do  
2 the attorney-client one on Thursday and the  
3 deliberative process one by Friday morning?

4 MR. SUSHON: That's correct, Your Honor.

5 THE COURT: Okay, do that.

6 MR. STEWART: Okay. And could we have opening  
7 of business Friday, since we're going to have our work  
8 cut out for us over that weekend?

9 THE COURT: I'll be very honest with you, I am  
10 not going to read it on Passover, so --

11 MR. STEWART: I was worried more about -- with  
12 all due respect, I'm worried more about me than you,  
13 Your Honor.

14 THE COURT: Right. So it doesn't -- I guess  
15 it's my kind way of saying that it doesn't matter to  
16 me. If it doesn't come in by Friday sort of  
17 mid-afternoon, it's not going to get looked at till  
18 Sunday, so I don't care if you want to file it on  
19 Saturday, but that's as between the two of you. I  
20 mean --

21 MR. STEWART: Well, actually --

22 THE COURT: Or you want to file it Monday? Is  
23 that what you're saying?

24 MR. STEWART: Well, I think our reply is due  
25 Monday. I'm worried about not getting the papers we're

1 replying to until too late in the day on Good Friday  
2 or --

3 THE COURT: I think he said Friday morning.

4 MR. STEWART: Yeah, Friday morning is fine, I  
5 said. My point was I'd like it as early as possible  
6 Friday morning because we have to get to work literally  
7 the minute the paper comes to us because of our own  
8 schedules involving Good Friday and Passover and  
9 Easter.

10 MR. SUSHON: And, Your Honor, this is  
11 Bill Sushon from O'Melveny.

12 I had suggested 10:00 a.m. as the time on Friday  
13 by which we would serve our opposition on the  
14 deliberative-process motion.

15 THE COURT: That works for me. You got it.

16 MR. STEWART: Okay. And then could we have  
17 until the end of the day on the 22nd for our replies?  
18 I think, under the existing schedule, they're due at  
19 noon.

20 MR. SUSHON: That's fine with us, Your Honor.  
21 Bill Sushon from O'Melveny.

22 MR. STEWART: Okay.

23 THE COURT: That's fine.

24 MR. DALSEN: And for the Oversight Board, I --  
25 and for the Oversight Board, William Dalsen, I have no

1 objection to that.

2 THE COURT: Okay. So let's do that. The  
3 Oversight Board is still a little bit in limbo here.  
4 So it's going to be rolling, it's going to be -- you're  
5 going to have as much of a privilege log as possible by  
6 the 19th; is that what I said? Somebody here is taking  
7 notes.

8 MR. DALSEN: Yes, Your Honor.

9 THE COURT: So what do we need to do? So I need  
10 you to meet and confer and at least provide a status  
11 report by the 23rd?

12 MR. SUSHON: Okay.

13 THE COURT: Like, so we can talk about it on the  
14 24th. I'm not sure that we'll be able to rule on  
15 anything on the 24th, but at least on the 23rd, if you  
16 can file a joint status report by midday on the 23rd,  
17 by noon --

18 MR. SUSHON: Okay.

19 THE COURT: -- then I can see if I need to put  
20 it somewhere on the agenda or if we just don't deal  
21 with it at all and just address it in Boston after the  
22 Omni. Does that make sense?

23 MR. STEWART: Yeah, it does, Your Honor. That's  
24 fine.

25 MR. SUSHON: Yes.

1 MR. STEWART: I mean, there's the logistical  
2 issue that I think it's right now scheduled that we  
3 would all go down to San Juan for it, and I'm always  
4 welcoming a trip to San Juan, but if it seems more  
5 likely that it would slip in a day or two and be in  
6 Boston, just in terms of travel and logistics, that's  
7 probably something we ought to consider, although maybe  
8 it's premature to do it on this call.

9 THE COURT: All right. Well, why don't you all  
10 talk. Let me just -- I'll put it on the record that I  
11 don't have an objection to not dealing with this at the  
12 Omni and that I am prepared to deal with it the  
13 following week, especially since my trial just settled  
14 that was going on the following week, so now's a good  
15 time to get me that week.

16 MR. STEWART: Okay.

17 THE COURT: Why don't you let me know what you  
18 think makes most sense as fitting in -- I'm going to  
19 keep the schedule that I just spit out about when  
20 everything is due. If you guys offline come up with a  
21 different schedule because you don't want it heard  
22 at -- you don't need it heard at the Omni, that's fine.  
23 If it needs to be heard at the Omni, though, we need to  
24 stick with the schedule.

25 MR. STEWART: Okay.

1 THE COURT: Okay?

2 MR. SUSHON: Understood, Your Honor. Thank you.

3 MR. DALSEN: Thank you, Your Honor.

4 THE COURT: All right. Hold on for one minute.  
5 Let me just see if there's something else I need to  
6 deal with.

7 All right. The Clerk's Office in Puerto Rico is  
8 closed. Do you need an order from me tonight, or have  
9 you all written down what you need to know?

10 MR. STEWART: I think we're okay, Judge.  
11 Probably what we'll do is one side or the other will  
12 send a letter memorializing what we believe to be the  
13 case, and if there's a disagreement, I'm sure that'll  
14 be corrected quickly.

15 THE COURT: Okay, let's do it that way.

16 And, again, if you agree to a different  
17 schedule, I'm okay with that --

18 MR. STEWART: Okay.

19 THE COURT: -- all right? But assume, then, it  
20 will be heard the week after -- it will be heard the  
21 week of the 29th --

22 MR. STEWART: Okay.

23 THE COURT: -- in Boston.

24 MR. STEWART: All righty. Thank you,  
25 Your Honor.

1 THE COURT: Okay. Anything further?

2 MR. STEWART: I think that's all we had.

3 THE COURT: All right. Then I'm not going to  
4 ask twice. Have a good weekend, everyone.

5 MR. STEWART: Thanks.

6 MR. SUSHON: Thank you, Your Honor.

7 MR. DALSEN: Thank you, Your Honor. You too.

8 (Adjourned 5:26 p.m.)  
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C E R T I F I C A T I O N

I, Debra D. Lajoie, RPR-FCRR-CRI-RMR, do hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes (from audio) in the above-entitled case.

/s/ Debra D. Lajoie

4/17/19